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Supreme Court of the United States

OCTOBER TERM, 1962

No. 799

TRUMAN EUGENE WILLARD, Petitioner

v.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

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Supreme Court of the United States

OCTOBER TERM, 1962

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v.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue in this case to review the judgment of the United States Court of Appeals for the Sixth Circuit, affirming the judgment of the United States District Court for the Northern District of Ohio, Eastern Division, convicting the petitioner for a violation of the Universal Military Training and Service Act.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported. It is printed as Appendix A, *infra*, pp. 26-29. The District Court wrote an opinion. (App. 164a-181a) The docket entries of the court below are Appendix C to this petition, *infra*, p. 30.

JURISDICTION

The judgment of the Court of Appeals was entered on January 16, 1963 (Appendix B, *infra*, p. 29)

QUESTIONS PRESENTED

The questions set forth below, while related to each other, are separately stated so as to show the two related issues involved in this case.

I.

Whether the word "vocation" used in the Act (50 U.S.C. App. § 466(g)) has a theological meaning so as to permit regular and customary performance of duties as an ordained minister to constitute the vocation of a minister of religion while holding down a part-time job in secular or nonreligious work in order to support himself and to pay the expenses of the regular and customary performance of religious duties as his vocation for which the minister receives no pay.

II.

Whether petitioner made a prima facie showing that he is an ordained minister under the Act entitled to exemption so as to require a minister's exemption when he showed that he spent an average of 100 hours per month in the regular and customary performance of his duties as an ordained minister, which was his vocation notwithstanding his holding down a part-time secular job in a chicken

slaughterhouse to support himself and to pay for expenses incurred in the performance of his duties as a minister for which he received no pay.

STATUTES INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 611, 622, 624:

Section 6(g) [50 U.S.C. App. § 456(g)]:

> (g) Regular or duly ordained ministers of religion, as defined in this title, and students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been preenrolled, shall be exempt from training and service (but not from registration) under this title.

Section 12(a) [50 U.S.C. App. § 462(a)]:

> Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Section 16(g) [50 U.S.C. App. § 466(g)]:

> (g) (1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of

a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect or organization.

STATEMENT OF THE CASE

The District Court, on a nonjury trial, found the petitioner guilty and sentenced him to serve a term of two years for a violation of the Act in refusing to perform civilian work as ordered by his local board. (App. 2a, 181a) The trial court wrote an opinion containing findings of fact and conclusions of law. (App. 2a, 164a-181a) The findings made by the District Court as to the time devoted by

petitioner to performance of his duties as a minister of religion are incomplete and inaccurate, as will be hereinafter shown, because they omit a large number of hours spent in performance of his duties as a minister during the period in question by petitioner.

Petitioner's conviction was affirmed by the Court of Appeals because the court found that the undisputed evidence showed there was basis in fact for the board holding that petitioner was not entitled to the exemption as a minister. (Appendix A, *infra*, pp. 26-29.)

The court below failed to make clear in its statement of the facts that from the date of petitioner's registration to the date of classification by the appeal board Willard's draft board file showed merely that he was an ordinary member or minister of Jehovah's Witnesses without a position of leadership. After August 22, 1955, however, the draft board file showed that his status had changed to a position of leadership in the organization when he was appointed Book Study Conductor or presiding minister of a service center for an area of the Youngstown, Ohio, Congregation of Jehovah's Witnesses. (App. 102a-103a) In order to show and make clear this vital change from ordinary membership in the organization to a position of leadership in the organization (considered to be vital and crucial to the Court of Appeals) a more detailed consideration of the facts as they appear after August 22, 1955, should be considered by this Court.

Petitioner was born on July 7, 1937. (App. 13a, 14a) He registered with Local Board No. 79, Youngstown, Ohio, on July 11, 1955. (App. 13a) A classification questionnaire was mailed to him and was returned by him on August 22, 1955. (App. 14a)

Willard's questionnaire showed that he was a minister of religion as one of Jehovah's Witnesses and for Watchtower Bible and Tract Society since May 22, 1947, and that he was formally ordained on that date. (App. 15a) He showed his education and schooling and that he was a

conscientious objector to participation in both combatant and noncombatant military service. (App. 15a-16a) Accompanying the questionnaire was voluminous proof of Willard's vocation of the ministry. (App. 20a-34a) This written undisputed evidence was submitted by Willard in a letter to the board accompanying the questionnaire. (App. 31a-34a) He gave his background and training in the ministry since childhood prior to his ordination. (App. 32a) He stated "approximately 23 hours a month are devoted to attending meetings of Jehovah's Witnesses." (App. 32a) He showed that he prepared and gave talks to the congregation that required five hours a month in preparation. (App. 33a) He added that he spent three hours a month in preparing for the service meetings and that he averaged "18 hours a month" in door-to-door preaching activity. He showed the board that he was "duly appointed as a Bible Study Conductor to aid others in weekly Bible Studies." (App. 33a) In addition to this appointment he was an assistant to one of the servants of the congregation. (App. 33a) He pointed out that for three years he had served during his summer vacations from school to the extent of one hundred hours a month or a total of 900 hours "during those years of vacation pioneer work." (App. 33a) He stated that all persons "can testify that I am a minister of God . . . able to expound His Word, administer baptismal ceremonies in public, perform burial rites, join two in holy matrimony, and all other ceremonies connected with carrying out my obligation as a minister to public welfare." (App. 33a-34a)

A petition signed by 38 persons was filed with the local board certifying that Willard was "an ordained minister of Jehovah God" and that he "has carried out his duties conscientiously and should be recognized as a minister by all." (App. 31a) Twelve additional written affidavits and statements were filed by petitioner along with his classification questionnaire corroborating various statements made by him in the questionnaire and in his letter to the local board. (App. 20a-31a) J. P. Mathews certified that he had

been expending 100 hours per month during the last three summer vacations in the ministry. (App. 20a) Amos M. Nesbitt certified to the same and added "he is an ordained minister." (App. 21a) Several other persons certified to the same facts. (App. 22a-24a) Oscar Burke informed the board that Willard "now holds the position as Book Study Conductor in Area No. 8." (App. 24a-25a) Joseph Emerick certified that he was an assistant to the presiding minister in the congregation having the position of "Advertising-Territory Servant." (App. 30a-31a)

A special form for conscientious objector was filed on August 29, 1955, by Willard after the above questionnaire and corroborating documentary evidence. (App. 34a) In it he certified that he was a conscientious objector opposed to both combatant and noncombatant military service. (App. 35a) It showed that petitioner's father, Clarence E. Willard, was at that time the leader of the congregation. (App. 38a)

Accompanying the conscientious objector form Willard submitted four additional affidavits. The affidavit of Lawrence M. Rankine certified that Willard, in addition to his house-to-house preaching activity as a minister, had been appointed by the Watchtower Society as a "local Bible Study Conductor and is continuing in that position at present." (App. 39a-40a) The other statements corroborated his activity as a minister of Jehovah's Witnesses. (App. 39a-42a) Jack E. Shumaker certified that Willard regularly attended meetings "arranged for training and teaching ministers of the gospel" and that he "regularly engages in the ministry, calling at peoples' homes to carry on Bible educational work." (App. 42a)

On November 7, 1956, Willard notified the local board that he had been married on September 29, 1956. (App. 43a-44a) The same information was given to the local board on November 5, 1958, when he returned the board's current information questionnaire and certified as follows: "My present occupation is . . . Minister Congregational duties

and Home instruction to persons desiring and needing it." (App. 44a-45a)

On January 16, 1959, the local board classified Willard 1-A and three days later notified him thereof. On January 30, 1959, he mailed a letter requesting a personal appearance, emphasizing that the written information that he had submitted to the board showed that he was "an ordained minister with every scriptural requirement being fulfilled." (App. 45a) The local board notified Willard to appear on March 20, 1959, and stated that if he desired to present any additional information it would have to be in writing or, if oral, summarized by him and filed with the board. The board concluded: "come prepared with your written information to submit." (App. 46a-47a)

Willard appeared on March 20, 1959, and was examined by members of the local board about the documentary evidence that he had submitted. (App. 48a-87a) He submitted a large number of documents showing talks that had been given on a multitude of occasions as a minister to the congregation, as well as funeral services that had been conducted by him. (App. 88a-92a) He also submitted an additional statement about his ministerial training and activity. (App. 93a-94a)

The oral examination of Willard by members of the local board about his draft board papers showed that Lawrence M. Rankine, one of the ministers who had filed a paper in his behalf, did not hold a position comparable to his but almost on the same level. (App. 39a-40a, 50a) Willard explained that he was an "assistant to the presiding minister in Hubbard, Ohio. . . . in the capacity of training the congregation for ministerial activity, and house to house activity, or presentation at people's doors and I am also responsible for the training of these members that are enrolled in this class." (App. 51a) He showed that George Kraynak was the presiding minister. (App. 51a) He added that Ward Sawyer, Sr., was an assistant to the presiding minister in another congregation of Jehovah's Witnesses. (App. 51a-52a) He

explained that J. P. Mathews, the assistant congregation servant in the West Unit or congregation, would take over immediately if anything happened to the congregation servant. Willard said: "I would in turn still be his assistant." (App. 54a) He showed that the assistant ministers in the congregation were in charge of certain obligations in the congregation and responsible for certain things. (App. 55a)

Willard showed that the size of the Hubbard congregation that he was associated with numbered 65 persons. (App. 57a) He showed that Mr. Pulver was a circuit servant and that Mr. Roper was a district servant and that the congregations of the circuit varied in size. (App. 57a-58a)

Willard explained about his various student talk assignments and reports appearing in his file on blue slips. He added that the first public Bible talk he ever gave was in April, 1958. (App. 59a) He identified a newspaper clipping in his file showing that he was in charge of funeral services. (App. 60a) He identified textbooks that were studied by him in training for the ministry and quoted extensively from them. (App. 61a-64a) Willard referred to his assignments as a minister and his duties of "instructing those in the congregation." (App. 65a) He said that in Youngstown, Ohio, he had been teaching Bible study groups since October 26, 1954, and supervising ministerial activity from these groups. (App. 65a) In answer to a question from the board he explained that supervising ministerial activity placed him in charge "of all things done from this group—these groups—as far as the way and what they learned from the Bible. I was responsible for these people's personal training from the Bible." (App. 65a) He stated that the size of some of the groups was only 8 persons but at the present time he had in his charge "30 Bible students." (App. 65a) He told the board that he would be 22 years of age on July 7, 1959. He explained that he received a temporary assignment to go to Sault Ste. Marie, Michigan, on the Canadian border, and there had in his charge a congregation of 35, "training them to perform their necessary obligations as Christians as in

the form of right worship." (App. 65a) He showed that his assignment came from the Watchtower Society at the international headquarters. (App. 65a) He said that he was in Sault Ste. Marie for about a year and then was reassigned by the Society to Hubbard, Ohio, where he was "responsible first for all Bible literature and Bible information that was to be presented to people's homes." (App. 65a-66a)

Willard showed that the *Watchtower* and *Awake!* magazines and the book "*Let God Be True*," and other literature in the congregation, were in his charge to be made available to the public and that he was responsible "for giving it to the other ministers in the congregation" for them to distribute. He said that was his first assignment. (App. 66a) He then added that a short time later he was assigned to give congregation instructions to the 65 people associated with the Hubbard congregation as the "Theocratic Ministerial Servant." As such he "was in charge of training the people in the congregation, all of them, as well as the other ministers." (App. 66a)

Willard referred to the photostatic copy of his ministerial assignment dated August 22, 1955, showing his ordination to be on May 22, 1947. (App. 68a) It was signed by Harley Miller, assistant superintendent of ministers and evangelists for the Watchtower Society. (App. 68a) This document appears in the record. (App. 102a-103a) It is a certificate by the legal governing body of Jehovah's Witnesses in New York that Willard was duly ordained and "engaged in preaching and teaching the principles of this Society and administering the rites and ceremonies thereof in public worship." (App. 102a) It further certified that since the date of appointment, August 22, 1955, Willard "has been recognized by this Society as qualified to represent it in such capacity." It certified further that Willard "officiates as an assistant presiding minister of the South Unit of the Youngstown, Ohio, Congregation of Jehovah's Witnesses." The certificate added that "since October 26,

1954," Willard had been serving "as a Book Study Conductor for this congregation, and as such he presides over Bible studies at certain designated places throughout the congregation's assigned territory, and generally supervises the ministerial activity of Jehovah's Witnesses from such meeting places." The Society further certified that Willard "regularly and customarily engages in preaching and teaching the tenets and principles of Jehovah's Witnesses as a missionary evangelist. He is authorized to perform the ordinary rites and ceremonies recognized and employed by Jehovah's Witnesses." (App. 103a) The Society added that Willard "performs such other ministerial duties as are required of him as an assistant presiding minister." The certificate was sworn to before a notary public on August 22, 1955. (App. 103a)

Upon the personal appearance Willard referred to his "Minister's License" from the State of Ohio. (App. 69a) He showed that it authorized him to perform marriages in the State of Ohio since June 15, 1956. (App. 69a) A copy of the document appears in the record. (App. 100a) It is signed by the Probate Judge of Mahoning County, Ohio, and recites that Willard is authorized to solemnize marriages in the State of Ohio "so long as he continues a regular Minister in such Society or Congregation." (App. 100a)

Willard answered questions of the local board about his ordination at the age of ten years in 1947. (App. 69a-70a)

Willard explained that as far as his secular work was concerned he had worked at quite a few jobs "to sustain my ministry" and that he worked full time "as long as they didn't interfere with my ministry. When they started to interfere, that's putting the job before my ministry," he changed from afternoon work because he could not work during the afternoons and "carry on my ministry or ministerial obligations, because I am in charge of some meetings that are held in the evenings and I have to be there." (App. 70a) He said that he worked days and sometimes at midnight. "I could attend to and take care of my ministerial

activities or obligations on Midnight Turn and still go to work after I was finished and work all through the night and of course that didn't interfere at all and then the next morning I would catch a few hours of sleep and start on another phase of ministerial activity." (App. 71a) He stated that he worked for two days a week during the last year slaughtering chickens for the Smith Poultry in Columbiana, Ohio, earning about $1.25 an hour, after he quit working for Saramar. (App. 71a)

Willard testified that the congregation did not pay him for his ministry but that "we support ourselves." (App. 71a) Among the 65 members of the congregation at Hubbard he said that there were seven ministers who were "responsible for various activities in the congregation." (App. 72a)

The board asked Willard for an accurate figure or estimate as to the number of hours or weeks or months he devoted to his ministerial duties. (App. 72a) He said that his life was devoted to the ministry and that he summed up the time that he devoted to the ministry in his personal statement given to the board in 1955, which is that he devoted 100 hours per month up to that date but that since 1955 "I have spent eons of time just studying practically, and helping other individuals and visiting people." (App. 72a) He said that by visiting he meant "door to door activities, just like Jesus did—I have no idea how many hours a week I spent on that." (App. 72a) "I devoted 100 hours expressly knocking at people's doors and delivering doorstep services that last about eight minutes." (App. 72a) He said that from January 1, 1958, to May 1, 1958, while he was at Sault-Ste. Marie, Michigan, he was engaged in the "full-time ministry from door to door." He added that he lost his car in Michigan and had to hitchhike back to Ohio with his wife, arriving in Hubbard during the second week of September and "that's when I began working at the chicken farm out here" or when he began to work part-time secularly or two days a week. He added: "the rest of my time was ministerial activities, all of it." (App. 73a)

Willard emphasized that he was assistant to the presiding minister in Hubbard and that he presided over two of the congregation meetings but not over the congregation. (App. 73a) Willard said that of the 65 members of the congregation in Hubbard there were only two persons who could perform the same duties as the congregation servant performed. (App. 74a-75a) The board asked Willard: "Concerning the duties you mentioned, you also distribute pamphlets?" He answered: "Yes, that is my main activity. To share the Bible information with the people." (App. 76a) When he said that he spent 15 hours when questioned he meant in delivering doorstep sermons. "That figure does not include return visits or personal Bible classes held in the people's homes." (App. 76a) He stated that he spent more time distributing pamphlets than on other duties and that "the main duty of the minister is to visit the people at their homes." He stated again that the number of hours per week that he presently devoted to distributing pamphlets was, "Ten, fifteen hours, I guess, a week, something like that." (App. 76a)

Willard said that he had performed three funeral services since he was ordained and only one or two during the past 12 months. (App. 77a) He explained that the Memorial ceremony was performed by the congregation servant but that the baptismal ceremony could be performed by any ordained minister of Jehovah's Witnesses for a person who was not yet baptized. (App. 77a-78a) Willard said that he had given public discourses, conducted Bible study groups in the homes of the people and presided over meetings on how to present the message at the people's door in the most effective way. (App. 79a)

Willard said that only ordained ministers who have been licensed by the State of Ohio can perform marriage ceremonies, and that as far as the Memorial or Lord's Supper was concerned only one, the presiding minister, would be qualified to conduct it. He said: "I don't think that is privi-

leged to me, yet." (App. 79a) He explained that there was a discussion before the Lord's Supper and the passing of the unleavened bread and wine to everyone present. (App. 80a)

Willard said that he could preach "anyplace as long as there is another person to listen." (App. 84a) He said that he wrote his own personal statement and assured himself that he was doing the right thing in claiming the minister's classification. He showed that his grandfather was a minister and that his father was engaged in the missionary work in South America. (App. 84a)

Willard testified that although he was ordained at the age of ten years it did not vary things, because the ordination "would be binding as long as I lived." (App. 85a) Willard also said that he was not asking for a conscientious objector's classification but was seeking the minister's exemption because "I feel the Bible entitles me to" a minister's classification. He concluded that the people he talked to in Hubbard that had been with him as a minister could show that, based on his activity as a minister, he was "quite deserving to have a minister's classification to carry on my ministerial activities." (App. 87a)

There is a paper in the file entitled "Written Information Requested by the Appeal Board" bearing the local board date stamp March 20, 1959, the date of the hearing, that reviews the file and itemizes the documentary proof for the purpose of establishing "my claim as a minister." (App. 94a-96a) Willard states therein that "I have been teaching Bible study groups since October 26, 1954, and supervising ministerial activity from these groups. Some with only 8 persons and at the present time I am in charge of 30 Bible students." (App. 95a) He reviewed again his return from Michigan where he taught 35 persons in the Bible and trained them to perform their necessary obligations. He added that he began a new assignment in Hubbard, being responsible for all literature presented at the people's homes. He added that he was later assigned "to give congregational instruction to the 65 people associated which would

help to perform their worship in a right way." He referred to his identification card and his Ohio Minister's License, entitling him to perform marriages. (App. 95a-96a)

No action was taken by the local board on March 20, 1959, the date of personal appearance. On April 17, 1959, the local board prepared a summary of the personal appearance. The summary of the board stated the members "felt that there were certain inconsistencies and admissions by the registrant which illustrated he was not a minister." (App. 104a) The memorandum stated that Willard "claimed that the ministry was his vocation" but that the record of personal appearance showed that he worked in secular work "full time as long as they didn't interfere with my ministry. When they started to interfere, that's putting the job before my ministry." (App. 104a) The memorandum refers to Willard stating that his job at Saranac interfered with his ministry and that he complained but "he continued to work at a job that interfered" with his ministry. (App. 104a) The board found in the memorandum that it "felt that employment for money was the registrant's vocation." The memorandum of the board also referred to the question about Willard distributing pamphlets and his answer, "Yes, that is my main activity. To share the Bible information with the people at their homes—that's where they are." (App. 104a) In the memorandum the local board referred to Willard's testimony that the congregation would be limited to the presiding minister or one of his assistants for the performance of particular sacraments. (App. 104a-105a) The board states: "Yet the registrant had not baptized or performed a marriage." It added that as far as the Lord's Supper was concerned Willard said: "I don't feel I am qualified to do that. I don't think that is privileged to me, yet." (App. 105a)

The board further found that Willard's "explanation of his church, its composition, duties and responsibilities seemed to be confusing and inconsistent throughout" and that Willard "expresses a lack of personal knowledge of his

own congregation, especially as to who are ordained." The board concluded that Willard could be likened to "a conscientious Sabbath School Teacher," but added: "we do not feel the entire record places him in a 4-D classification under the Selective Service Regulations." (App. 105a)

The local board on the date of making the memorandum, April 17, 1959, changed Willard's classification from 1-A to 1-O, making him liable for the performance of civilian work in lieu of induction into the armed forces. (App. 17a) On April 28, 1959, Willard wrote a letter, which was filed by the local board on May 5, 1959, acknowledging receipt of the classification and complaining of it as a "misrepresentation of my vocation. I am a minister, ordained and authorized by both the Bible and laws of the land." He stated that he should have been exempted as a minister. (App. 106a) In conclusion he requested an audience "before the Appeal Board." (App. 106a-108a)

The local board notified Willard on July 23, 1959, that his file could not be forewarded to the appeal board because he appealed "after the expiration of the appeal period." (App. 118a) There was a telephone conversation with the board disclosing that the lateness of petitioner's letter of appeal was due to insufficient postage. (App. 118a) With the help of an advisor he wrote a letter to the State Director for relief from his late filing of the appeal. (App. 119a-120a) The State Director referred to the letter of Willard dated January 26, 1959, addressed to the members of the appeal board, which was considered as a request for personal appearance, and based on this suggested that the cover sheet be sent to the appeal board. (App. 129a) The local board forwarded the file to the appeal board on January 21, 1960. (App. 122a)

Willard was ordered to take a physical examination on May 3, 1960, and was thereafter found to be physically acceptable for service under the Act. (App. 17a, 124a-125a)

A special report form was filed by petitioner covering his selecting a type of civilian work. Therein he was instructed

on the procedure he was to follow in making a selection. (App. 125a-129a) Willard answered that the only type of work that he would be willing to do would be to continue in the ministry for the Watchtower Society. (App. 127a-129a) After Willard failed to designate a specific type of civilian work he was mailed a list of three types of work to choose from. (App. 18a, 129a) He replied to the board by letter refusing all three types of work. (App. 18a, 130a) He requested the local board advisor to request the State Director or National Director to appeal his case to avoid an injustice. (App. 130a-132a) The State Director ordered a meeting between the local board and petitioner with a representative of his office present in an effort to reconcile differences on the refusal to accept civilian work. A meeting was held on August 9, 1960. (App. 133a-134a) Willard again stated his refusal to do civilian work. (App. 134a) It was recommended that Willard be assigned to do hospital work at Columbus, Ohio. (App. 19a, 134a-135a) A report was made to National Headquarters about Willard's refusal to do hospital work and a request was made for authority to assign him to the State Hospital at Columbus to do work. (App. 19a, 135a) The request was granted. (App. 136a-137a) Willard was mailed an order on April 3, 1961, to report for civilian work commanding him to appear at the local board on April 14, 1961, "where you will be given instructions to proceed to the place of employment," and ordering him to report for employment pursuant to instructions of the local board. (App. 19a, 138a) Willard failed to report to the local board as ordered. (App. 19a-20a, 139a, 141a)

REASONS FOR GRANTING THE WRIT

I.

The holding of the court below is in direct conflict with a decision of another Court of Appeals involving the identical state of facts.

In *Wiggins* v. *United States*, 261 F. 2d 113 (5th Cir. 1958) (cert. denied 359 U. S. 942; rehearing denied 359 U. S. 976), the Watchtower Society, legal governing body of Jehovah's Witnesses, issued to Wiggins a certificate showing his appointment as Book Study Conductor or assistant minister in the congregation. (261 F. 2d at page 118) Willard was issued a certificate by the same governing body certifying to his appointment on October 26, 1954, as a Book Study Conductor, certifying that he presided over Bible studies at meetings throughout the congregation and supervised the ministerial activity of Jehovah's Witnesses. (App. 102a-103a) Wiggins by the same appointment was required to conduct Bible study meetings twice a week and to lead Jehovah's Witnesses in the magazine work. (261 F. 2d at page 119)

In a period of six months Wiggins spent only about 38 hours per month or one-quarter as much time as he devoted to secular work in discharging his duties as Book Study Conductor. (261 F. 2d at page 119) Willard devoted 100 hours per month to the discharge of his duties as Book Study Conductor and as a door-to-door minister. (App. 20a-22a) Wiggins devoted 40 hours per week to the performance of his duties as a crane operator. (261 F. 2d at page 119) Willard devoted only two days per week to secular work and the remainder of his time was devoted to the performance of his duties as a minister. (App. 73a)

Willard testified that he devoted 100 hours per month to the door-to-door ministry up to the time he was requested to give a personal statement in 1955 and "the time since that—I have spent eons of time just studying practically, and helping other individuals and visiting people." (App.

72a) He continued: "I devoted 100 hours expressly knocking at people's doors and delivering doorstep services that last about eight minutes." (App. 72a) When he was in Michigan, after leaving Hubbard, he was in "the full-time ministry from door to door. I lost my car and my wife and I had to hitchhike back to Ohio." There he began work, part time, two days a week, slaughtering chickens, and "the rest of my time was ministerial activities, all of it." (App. 73a) He explained that he worked only two days a week because the rest of his time was required for the ministerial work and a full-time secular job did not fit into his schedule. (App. 73a)

A long time before that he had been working for Saramar Aluminum on Mahoning Avenue in Youngstown. He worked full time secularly for awhile and only so long as the work did not interfere with his ministry. (App. 70a) When the job started to interfere, "that's putting the job before my ministry . . . I told them I just wouldn't work." (App. 70a) He could not work afternoons on a secular job and carry on his ministry, "because I am in charge of some meetings that are held in the evenings and I have to be there." (App. 70a) He worked sometimes beginning at midnight, which allowed him to work all through the night, and this "didn't interfere at all and then the next morning I would catch a few hours of sleep and start on another phase of ministerial activity." (App. 71a) During the last year before his personal appearance he had worked only two days a week at the chicken slaughtering house at Columbiana. (App. 71a)

It is obvious that the performance of secular work by Willard in no way interfered with the carrying out of his regular vocation, the ministry. Secular work in the case of other ministers has been held not to bar the classification. *Dickinson* (346 U. S. 389) devoted only 5 hours a week to secular work. *Hacker* (215 F. 2d 575) devoted 15 hours a week to secular work, which was much more than the two

days per week devoted by Willard. *Brown* (216 F. 2d 258) worked for short periods of time during the year at secular work that did not affect his ministry. *Benzing* (117 F. Supp. 598) devoted 18 hours per week to secular work. *Lowman* (117 F. Supp. 595) devoted three days a week working at a manufacturing plant. *Burnett* (115 F. Supp. 141) worked an average of 12 hours a month on a farm. *Pate* (243 F. 2d 99) helped farm 40 acres of land incidentally while performing his full-time ministry as one of Jehovah's Witnesses; *Ransom* (223 F. 2d 15) devoted one day a week working on the farm to pay for his room and board while living with his parents. Willard's case is more like others where no secular work was performed.—*United States* ex rel. *Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir. 1945); *Schuman* v. *United States*, 208 F. 2d 801 (9th Cir. 1953); *Jewell* v. *United States*, 208 F. 2d 770 (6th Cir. 1953); *Thoman* v. *United States*, 208 F. 2d 770 (6th Cir. 1953); *United States* v. *Rodriguez*, 119 F. Supp. 111 (D. P.R. 1954); *United States* ex rel. *Arpaia* v. *Alexander*, 68 F. Supp. 820 (D. Conn. 1946); *United States* ex rel. *Flakowicz* v. *Alexander*, 69 F. Supp. 181 (D. Conn. 1946); *United States* v. *Ryals*, 56 F. Supp. 773 (N.D. Ga. 1944); *United States* v. *Hurt*, 244 F. 2d 46 (3rd Cir. 1957).

The undisputed evidence showed that Willard had no full-time secular work at any time that to any degree interfered with his duties in the discharge of his vocation, the ministry. He had a job for a short period that interfered somewhat with his ministry but this was discontinued. He worked only two days per week slaughtering chickens to support himself in the ministry. On an earlier job he worked on the midnight shift in the industrial plant that allowed him to perform his ministerial duties without interference.

Cox v. *United States*, 332 U. S. 442, 451 (1947), is not in point because in that case the record showed that the registrant was engaged in full-time secular work, which made it impossible to determine whether the ministerial or secular

work was his vocation. Here the undisputed evidence shows that registrant's vocation is the ministry and the performance of secular work is entirely secondary and incidental to the main job performed, namely, the ministry that is his vocation.—*Dickinson* v. *United States*, 346 U. S. 389 (1953); *Wiggins* v. *United States*, 261 F. 2d 113 (5th Cir. 1958); *Pate* v. *United States*, 243 F. 2d 99 (5th Cir. 1957); *Jewell* v. *United States*, 208 F. 2d 770 (6th Cir. 1953).

The Selective Service file in this case shows that Willard (1) was wholly dedicated to the performance of his duties, (2) he engaged in the performance regularly and customarily each week and not incidentally or irregularly, (3) he engaged in them as a leader of a group of the congregation and thus acted as an assistant pastor to the congregation servant and (4) he engaged in the performance of these duties, or that he spent his available 400 hours monthly in them, as his vocation, even though he spent many hours per week doing work to support himself in the ministry. This proof constituted a "far stronger showing" that he was a minister of religion entitled to exemption under the Act.

It is this "far stronger showing" (*Cox* v. *United States*, 332 U. S. 442, 451 (1947)) and the "definite evidence of his full devotion of his available time to religious leadership" (*Cox* v. *United States*, 332 U. S. 442, 451 (1947)) that were submitted to the local board by Willard that clearly distinguishes his case from *Cox* v. *United States*, 332 U. S. 442 (1947). Another distinction should be mentioned. It is that Willard's claim was supported, like that of Dickinson, by a photostatic copy of the certificate of appointment by the governing body of Jehovah's Witnesses to his position of leadership as a minister and also by the certificates of 21 other persons about his leadership and the performance of his duties as his vocation, which also distinguishes this case from *Cox* v. *United States*, 332 U. S. 442 (1947).

It is urged upon the Court that in the case of Willard there was no preaching "part-time or half-time, occasionally or irregularly." (346 U. S. at page 395) Willard held an

office of leadership in the congregation and was performing the ministry as required by the statute regularly and customarily and not part time or half time, occasionally or irregularly. Petitioner contends, therefore, that *Dickinson* v. *United States*, 346 U. S. 389 (1953), is precedent for this case and the holding below conflicts with if as well as *Wiggins* v. *United States*, 261 F. 2d 113 (5th Cir. 1958); *Pate* v. *United States*, 243 F. 2d 99 (5th Cir. 1957); and *Jewell* v. *United States*, 208 F. 2d 770 (6th Cir. 1953).

The position of the Government that it can compare the duties of the petitioner to those of a Sunday School teacher violates the ecclesiastical determination of the governing body of Jehovah's Witnesses that he is a minister and that the duties performed by him are the duties of a minister. That ecclesiastical determination is binding upon the Government and the courts. (*Gonzalez* v. *Archbishop*, 280 U. S. 1, 16-17; *Kedroff* v. *Saint Nicholas Cathedral*, 344 U. S. 94, 116; *Watson* v. *Jones*, 80 U. S. (13 Wall.) 679, 728) The comparison which may thus be made is odious, as comparisons usually are, and would also be in conflict with the Act that protects each minister who is "preaching" his religion as vocation. It is not required that each minister get the approval of his religion from some other religion or show that it conforms to the orthodox before he is entitled to the exemption.

The court below referred to the narrow scope of judicial review in Selective Service cases, citing *Estep* v. *United States*, 327 U. S. 114 (1946). The court below erroneously misconstrued and misinterpreted the word "final" used in the Act and referred to in the *Estep* case, to mean that it would constitute the weighing of the undisputed evidence appearing in the file. It is submitted that we are not here confronted with a question of weighing the evidence. The Court was properly concerned only with an interpretation of the undisputed evidence. An examination of the Selective

Service file fails to show that there is any contradictory evidence: There is no memorandum by the local board or by the appeal board that the credibility of the registrant is involved. The memorandum prepared by the local board merely shows that it proceeded on various illegal grounds to reject the ministerial status of the petitioner. There was no memorandum made by the local board that it believed any of the undisputed evidence appearing in the file was untrue or contradictory. In this state of the record under the decisions there is no weighing of the evidence involved in the case. The only problem for determination is to accept the facts as they appear in the file and then, applying the principles of law announced in the various decisions, to say whether or not the undisputed evidence in the file shows that the petitioner was a minister of religion regularly and customarily engaged in preaching and teaching the doctrines and principles of his church as his vocation and not incidentally or irregularly as defined in the statutes.

It is fundamental that the burden of proof is upon the petitioner to establish his exemption under the law by facts shown in the Selective Service file. (*Estep* v. *United States*, 327 U. S. 114 (1946); *Dickinson* v. *United States*, 346 U. S. 389 (1953)) The petitioner supplied undisputed proof that he was engaged regularly and customarily in teaching and preaching the doctrines and principles of his church as his vocation and was not performing these services incidentally or irregularly, as those terms are used in the Act. The petitioner established a prima facie case which could not be disregarded by the local board. Unless and until the local board made findings of fact disputing facts shown by the registrant or makes finding attacking his credibility the documentary proof must be taken for what it says. *Dickinson* v. *United States*, 346 U. S. 389 (1953); *Wiggins* v. *United States*, 261 F. 2d 113, (5th Cir. 1958); *Batterton* v. *United States*, 260 F. 2d 233 (8th Cir. 1958).

On the burden of proof petitioner is supported by

the Court in its holding in *Dickinson* v. *United States*, 346 U. S. 389 (1953). The Court should be careful not to simulate a review of a draft board oral hearing of a ministerial classification case with a conscientious objector case. The review of a draft board personal appearance where the registrant made a ministerial claim is dependent entirely upon the objective facts that are to be found in the draft board file. (*Dickinson* v. *United States*, 346 U. S. 389 (1953)) When the Court, however, is confronted with a review of a conscientious objector oral hearing, then the Court can indulge in deferences in favor of a draft board determination because the conscientious objector claim is entirely subjective. (*White* v. *United States*, 215 F. 2d 782, 786 (9th Cir. 1954), cert. denied 348 U. S. 970; *Witmer* v. *United States*, 348 U. S. 375 (1955)) In the case of a minister claiming an exemption the draft board must of necessity build a record since this is contingent entirely upon objective facts established by the hearing and by the papers filed by the minister. (*Dickinson* v. *United States*, 346 U. S. 389 (1953)) When, however, there is involved a conscientious objector claim the local board is not thus burdened with developing an affirmative record contradicting the statements made by the registrant.—*Witmer* v. *United States*, 348 U. S. 375 (1955); *White* v. *United States*, 215 F. 2d 782, 786 (9th Cir. 1954); cert. denied 348 U. S. 970.

II.

The question is important.

Petitioner relies upon the ground of importance of the question presented, which is basis for jurisdiction in this case. The case is important to the 281,000 Jehovah's Witnesses because they are faced with the loss of exemption for over 3,000 ministers of draft age, who are leaders. The case becomes even more important to Jehovah's Witnesses when it is considered that in the event of an emergency the draft age can be raised and

this would affect approximately 25,000 ministers who are leaders in the organization. It is equally important to a large number of other religious organizations and congregations in the country whose ministers pursue the ministry as their vocation but who also do secular or nonreligious work full time to support themselves in the performance of their vocation of the ministry. It is also important for this Court to determine whether Congress actually intended or meant by the word "vocation" it used in the Act to bar such ministers from claiming their exemption, the dictum in *Dickinson v. United States*, 346 U. S. 389, to the contrary notwithstanding.

CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

HAYDEN C. COVINGTON
124 Columbia Heights
Brooklyn 1, New York
Counsel for Petitioner

January, 1963.

APPENDIX A — OPINION

No. 15083

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. TRUMAN EUGENE WILLARD, *Defendant-Appellant*.	APPEAL from the United States District Court for the Northern District of Ohio.

Decided January 16, 1963.

Before CECIL, Chief Judge, MILLER and O'SULLIVAN, Circuit Judges.

PER CURIAM. This case involves the appeal of defendant-appellant, Truman Eugene Willard, from a judgment convicting him of failing to obey an order of Local Board 79 of Youngstown, Ohio. The order was made under authority of the Universal Military Training and Service Act, Title 50, USCA, App. The case was tried to the Court without a jury. Defendant, a member of Jehovah's Witnesses, sought exemption from any service on the asserted ground that he was a minister within the meaning of Sections 456 (g) and 466 (g) (1) (2) and (3), Title 50, USCA, Appendix. He was denied such exemption and was classified as 1-O, Conscientious Objector. When directed to report for work appropriate to such classification, he refused to report.

The evidence produced before the Local Board showed that at the age of ten Willard was ordained a minister in the Watchtower Bible and Tract Society. The fact that he

had been so ordained would not, of itself, render Willard a minister within the meaning of the Selective Service Act. To be entitled to such a classification, one must, as a vocation, be regularly engaged in preaching and teaching his religion, in administering its rites and in discharging the duties of a minister. 50 USCA App., § 466 (g) (2). Willard was eighteen years old when he first claimed to the Local Board that he was entitled to the ministerial classification. Although there was much testimony given before the Local Board and many affidavits and other documents presented to it, the record which was there made contains uncertainties and ambiguities which are significant on this appeal. One of these is the uncertainty surrounding the amount of time Willard devoted to claimed ministerial activities. It is also unclear what degree of responsibility rested upon Willard in the established hierarchy of the Jehovah's Witnesses. Willard described the largest congregation with which he was associated as having sixty-five members. This group, however, was served by seven ministers, including a presiding minister, and by various assistants who were assigned, to some degree, to separate categories of responsibility. Willard was neither the presiding minister of the congregation nor a first assistant to such presiding minister. The District Judge held that Willard had failed to establish a prima facie case that he was entitled to the ministerial exemption. Because we believe the opinion of the District Judge adequately reviews the material from which the Local Board made its final determination, we make no further recitation of the facts.

Over a period of five years, this young man's case was considered and reconsidered many times. The files before us do not disclose any unseemly haste or arbitrary action in the Selective Service System's effort to determine whether Willard's activities entitled him to exemption as a minister. The following departments of the government to wit: the Local Draft Board, the Appeal Board, the Ohio Selective Service Headquarters, and the National Head-

quarters of the Selective Service System considered his claim of exemption. All concurred in the propriety of denying the exemption sought, and of classifying defendant as 1-O. If there was factual basis for such classification, neither the District Court nor this Court has authority to substitute its judgment for that of the Local Board.

In these Selective Service cases, our power of review is a narrow one.

> "The provision making the decisions of the local boards 'final' means to us that Congress chose not to give administrative action the customary scope of judicial review. . . . The decisions of the local boards . . . are final even though they may be erroneous. The question of jurisdiction of the local board is reached *only if there is no basis in fact* for the classification which it gave the registrant." *Estep* v. *United States*, 327 U. S. 114, 122, 123, 90 L. Ed. 567, 573.

The burden was on the registrant, Willard, to establish that he was a minister within the contemplation of the statute providing for the exemption sought. ". . . [S]ince the ministerial exemption is a matter of legislative grace, the Selective Service registrant bears the burden of clearly establishing a right to the exemption." *Dickinson* v. *United States*, 346 U. S. 389, 395, 98 L. Ed. 132, 137. See the Supreme Court's reaffirmance of the above observations in *Witmer* v. *United States*, 348 U. S. 375, 380, 381, 99 L. Ed. 428, 433.

Defendant asserts that there were some procedural irregularities in the processing of his case before the Local Board and the Appeal Board. Procedural impropriety in the District Judge's reception of evidence is likewise charged. We find nothing in such contentions calling for reversal. The facts of this case and the bases for decision are adequately set forth in the District Judge's opinion and findings.

We find no error therein and affirm the judgment of conviction on the opinion of District Judge Kalbfleisch, *United States* v. *Truman Eugene Willard*, . . . F.Supp. . . . .

APPENDIX B—JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 15,083

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
TRUMAN EUGENE WILLARD,
Defendant-Appellant.

FILED
JAN 16 1963
Carl W. Reuss, Clerk

BEFORE: CECIL, Chief Judge, MILLER and O'SULLIVAN, Circuit Judges.

APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for entry:

CLIFFORD O'SULLIVAN
United States Circuit Judge.

APPENDIX C — DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 15,083

Date	Filings — Proceedings	Filed
1962		
July 2	Duplicate notice of appeal and clerk's statement of docket entries	
Aug. 8	Certified record (1 Vol. pleadings and testimony), filed and cause docketed	
" 10	Appearance of counsel for Appellee	
" 10	Appearance of counsel for Appellant	
" 15	Proof of service of statement of Appellant as to contents of appendix	
Sep. 5	Twenty copies of Appellant's Brief	
" 5	Twenty copies of Appendix to Appellant's Brief	
" 5	Affidavit of service of brief and appendix for Appellant	
Oct. 9	Motion: Appellee's brief to 11 13 62 (Granted)	
Nov. 27	Twenty copies of Appellant's Reply Brief	
" 13	Proof of service of brief for Appellee	
" 27	Twenty copies of Appellant's Reply Brief	
" 27	Proof of service of Appellant's Reply Brief	
Dec. 15	Cause argued and submitted (Before: Cecil, Miller and O'Sullivan, JJ.)	N-85
1963		
Jan. 16	Judgment of the District Court affirmed	N-105
" 16	Opinion Per Curiam (O'Sullivan, J.) 3 pp.	

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No. 739

In the Supreme Court of the United States

October Term, 1965

[illegible] WILLIAM, petitioner

v.

UNITED STATES OF AMERICA

[illegible]

[illegible]

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677991—63—1

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 799

TRUMAN EUGENE WILLARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 26–29) is not yet reported. The opinion of the district court (R. 164–181) is reported at 211 F. Supp. 643.

JURISDICTION

The judgment of the court of appeals was entered on January 16, 1963 (Pet. App. 29). The petition for a writ of certiorari was filed on February 7, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was basis in fact for the selective service board's denial of petitioner's claim to be classified as a minister.

STATUTE INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 611, 622, 624:

Section 6(g) [50 U.S.C. App. 456(g)]:

> (g) Regular or duly ordained ministers of religion, as defined in this title, * * * shall be exempt from training and service (but not from registration) under this title.

Section 12(a) [50 U.S.C. App. 462(a)]:

> Any * * * person * * * who, * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Section 16(g) [50 U.S.C. App. 466(g)]:

> (g)(1) The term "duly ordained minister of religion" means a person who has been ordained * * * to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the

principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

STATEMENT

Petitioner was convicted, in the United States District Court for the Northern District of Ohio, of refusal to obey the order of a selective service board to report for civilian work as a conscientious objector in lieu of military service (R. 164, 181). He was sentenced to imprisonment for a period of two years (R. 181). He claimed that there was no basis in

fact for the board's refusal to classify him as a minister, a classification which would have entitled him to a complete exemption from service (R. 171).

1. Petitioner's showing to the selective service system concerning his ministry in the Jehovah's Witnesses sect appears of record (1) in his selective service questionnaire of August 1955 and associated documents, and (2) in the transcript of his personal appearance before the board in March 1959 and documents presented in connection therewith.

a. In the questionnaire of August 1955, petitioner claimed that his ministry began on May 22, 1947, prior to his tenth birthday, when he was baptised (R. 14–15, 32). He alleged that he averaged 18 hours per month in "door to door activity" in which "all ministers must participate" (R. 32–33). He stated that knowledge used in this activity was "ascertained" by attending meetings which required approximately 23 hours per month (R. 32). As a member of the "Theocratic Ministry School in the local congregation," petitioner "set aside" 5 hours per month preparing talks he was given to prepare (R. 32–33). He also said that parts of the service set aside for him required two or three hours per month (R. 33).

Petitioner reported that he had been appointed as "a Bible Study Conductor to aid others in weekly Bible Studies," and that he was "an assistant to one of the servants" (R. 33, 102–103). He stated that he was "able to" administer baptismal, burial and matrimonial rites (R. 33–34). He reported that during vacation from school he had been "a summer vacation pioneer" for three years, and "offered 900

hours of service to Jehovah during those years," but was currently "unemployed" and "waiting" for work at the Bethel House of the sect (R. 33).

With petitioner's statement numerous affidavits and letters were submitted by persons describing him, variously, as a "minister" (R. 20–31, 40–42), a "company publisher" (R. 20, 39), a "Book Study Conductor in Area No. 8" (R. 24), a "Bible Study Conductor" (R. 40), a "Bible Study servant" (R. 29–30) and "a minister of the Theocratic Ministry School" (R. 24, 30), and attesting to his work as a "summer pioneer" (R. 20–22). One person described petitioner as "on his way" to "full time" ministry if his "present training course" remains uninterrupted (R. 23).

2. On January 16, 1959, petitioner was classified 1–A. He appeared personally before the selective service board in March 1959, and when asked to explain his "exact position in the church," stated, "I might say I am an assistant to the presiding minister in Hubbard, Ohio,—no,—I am his assistant in the capacity of training the congregation for ministerial activity, and house to house activity, or presentation at people's doors and I am also responsible for the training of these members that are enrolled in this class—the proper presentation and delivery of material" (R. 51). This class was called the "theocratic ministry school" (R. 51), and petitioner was a "Theocratic Ministerial Servant" (R. 66).

Petitioner stated that distribution of pamphlets was his "main activity." To this he devoted "ten, fifteen hours, I guess, a week, something like that," plus time for return visits or "personal Bible classes held in the

people's homes" (R. 76). As to two meetings of the congregation, petitioner was "the presiding minister over those meetings but not over the congregation" (R. 73).

Petitioner did not claim status as a Pioneer of the organization nor did he claim that he devoted the 1,200 hours of annual service required of a Pioneer. Upon request for "an accurate figure or estimate as to the number of hours, or weeks, or months, you devote to your ministerial duties," petitioner replied only "eons of time just studying practically, and helping other individuals and visiting people * * * door to door" (R. 72).

Petitioner was not of the rank of the "Assistant Congregation Servant," who would take charge of the congregation in the absence of the Congregation Servant (R. 54). He did not stand as number three in the congregation (R. 55). Asked how many of the 65 persons of the congregation were "ministers," petitioner denied "any idea," stating that he knew "quite a few that are" and that "there are 7 ministers who are responsible for various activities in the congregation" (R. 72).

Petitioner had conducted no baptisms (R. 77). These were conducted by circuit or district supervisors and—rarely—by the congregation leader (R. 80). Petitioner had supervised no Lord's Supper, the "one day of importance through the whole year," this being reserved to "the presiding minister" (R. 78–79).

At the age of eighteen, petitioner had obtained an Ohio Minister's License which authorized him to perform marriages (R. 100). Such a license was ob-

tainable from a probate judge upon credentials showing that the applicant was an ordained minister of the congregation (Ohio Revised Code Ann., § 3101.10). Petitioner had performed no marriage at the time of his personal appearance (R. 78). A record of a marriage conducted by him in Pennsylvania in the following June was added to the selective service record in July 1959 (R. 116–117). Petitioner had conducted three funerals (R. 60, 77). Funerals could be conducted by an "ordained minister"—"not an individual who is not baptized" (R. 77).

Petitioner had been assigned by the national organization in November 1957 to "teaching the congregation of 35 Bible students [at Sault Ste. Marie, Michigan] Bible subjects and training them to perform their necessary obligations." He remained there for about a year. Thereafter, he came to Hubbard, Ohio, where he was located at the time of the hearing (R. 65, 73, 95).

In the course of his personal appearance on March 20, 1959, petitioner stated that he was unemployed as to secular occupation, having been laid off from work at Saramar Aluminum on November 16, 1958. He was currently collecting unemployment compensation. He had worked at Saramar from May 16, 1958, subject to lay offs, earning "16 hundred dollars, 17—18—along in there" (R. 70–71). The work at Saramar had been full time. He had sought rearrangements of afternoon work to avoid interference with his religious work, but was unsuccessful. He did not leave the employment on this ground, but continued until laid

off (R. 70–71). At another time, not clearly set forth in the record, petitioner had been employed two days per week at a chicken slaughter house (R. 71, 73).

3. There was introduced in evidence a Memorandum to National Selective Service Appeal Board (R. 141–163), dated June 25, 1958, Gov. Exhibit No. 2, in which the General Counsel for Jehovah's Witnesses answered certain questions of the Appeal Board. This disclosed, *inter alia*, an organization of "Part-Time Ministers (Congregation Publishers)," numbering 197,541, and "Full-Time Ministers (Pioneers)," numbering 6,469 (R. 141–142).

The organization claimed exemptions for all male Pioneers annually devoting the required time of 1,200 hours to specified preaching work (R. 144). It did not claim exemption for every Congregational Servant, of which there was one for each congregation, but only for those who were also Pioneers or who could show that they devoted sufficient time to the "ministry" to claim that it was their vocation rather than an avocation (R. 144, 145, 149).

4. Petitioner was classified by the selective service board as a conscientious objector (1–O) but was denied classification as a minister (R. 14). The board likened him to a "Sabbath School teacher" (R. 105).

The district court found basis in fact for the board's classification. It observed that while Jehovah's Witnesses consider all their members ministers, whether full time or part time (R. 177–178), the statutory requirement is that the ministry must be the registrant's regular and customary vocation. It held that petitioner had failed to establish that the minis-

try was his vocation since he had been vague as to the time devoted to ministerial work and the record disclosed no substantial time (R. 178–179). The court noted that petitioner made no claim to being a Pioneer or a full-time minister (R. 179), and that nothing indicated a position of leadership or showed that petitioner's service would leave his "congregation without a cleric" (R. 179).

The court of appeals affirmed on the basis of the memorandum opinion of the district court (Pet. App. 29) noting particularly "the uncertainty surrounding the amount of time [petitioner] devoted to claimed ministerial activities" and the fact that in a congregation of only 65, petitioner was neither the presiding minister of the congregation nor a first assistant (Pet. App. 27).

ARGUMENT

This Court said in *Dickinson* v. *United States*, 346 U.S. 389, 394–395:

> The Universal Military Training and Service Act does not permit direct judicial review of selective service classification orders. * * * "The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."
>
> The ministerial exemption, as was pointed out in the Senate Report accompanying the 1948 Act, "is a narrow one, intended for the leaders of the various religious faiths and not for the members generally." S. Rep. No. 1268, 80th Cong., 2d Sess. 13. Certainly all members of a religious organization or sect are not entitled to the exemption by reason of their membership, even though in their belief each is a

> minister. Cf. *Cox* v. *United States*, 332 U.S. 442 (1947). * * * Preaching and teaching the principles of one's sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to bring a registrant under § 6(g). These activities must be regularly performed. They must, as the statute reads, comprise the registrant's "vocation." And since the ministerial exemption is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing a right to the exemption.

A review of the extensive record as well as the full opinion of the district court shows that, on the facts presented, the selective service board's ruling that the petitioner is not entitled to exemption as a "regular or duly ordained minister of religion" was neither arbitrary nor capricious. The board afforded petitioner a full hearing and fairly and properly applied the exemption statute in accordance with the decisions of this Court.[1] There is no cause for further review.

1. Petitioner, by his own admission, was not the leader—known as the Congregation Servant—of his congregation of Jehovah's Witnesses. Nor was he the Assistant Congregation Servant, nor even the third in succession in his small congregation of 65 members.

[1] In its memorandum opinion denying petitioner's motion for judgment of acquittal, the district court stated (R.180): "From examination of the record it is apparent that defendant was treated courteously by the Board and that he was given every opportunity over a six-year period to submit evidence in support of his claim. If the Board had any doubts as to what action it should take, it resolved them in Willard's favor by classifying him as 1-O. The Court finds that there was no denial of procedural due process to defendant before the Local Board or the Appeal Board."

He was one of seven persons having functions not of spiritual leadership, but of a limited administrative or training nature. These facts combined with the vagueness of the evidence as to the period of time petitioner devoted to religious activity each week, the limited nature of his activities in the religious training of others and the absence of any showing that he administered the ordinances of public worship, provide ample support for the board's denial of the ministerial exemption.

a. By his own admission, petitioner's main activity was distribution of pamphlets, as in the case of most of the members of this essentially evangelistic sect. Beyond this, petitioner presented evidence only of some teaching of other members, without indicating whether he was solely responsible for their training or whether a number of members performed interchangeably, as was the case with respect to occasional discourses from the pulpit.

Petitioner was vague as to his training of others as a "Theocratic Ministerial Servant" or a "Bible Study Servant." He said he gave instruction concerning "the proper presentation and delivery of material" (R. 51) or "how to effectively leave the volumes with the people and show them how to study in their own home at their convenience" (R. 66). The selective service board aptly likened his position to that of a Sunday school teacher (R. 105). It is clear the Congress, in its selective service legislation, contemplated exemption only of the limited number of ministers and not the unlimited numbers of church administrators and Sunday school instructors.

b. Petitioner was also vague as to the time devoted to these various activities. Conspicuously absent was any claim to the status of Pioneer, with its service requirement of 1,200 hours per year, or any claim to a current record as a full-time minister. When asked outright for an accurate figure or estimate of time devoted to his ministerial duties, petitioner retreated into vague generalities about "eons of time" (*supra*, p. 6) and "ten, fifteen hours, I guess, a week, something like that" devoted to the main activity of distributing pamphlets (*supra*, pp. 5–6). He had been in full-time secular work for Saramar Aluminum until laid off by the company the preceding November.[2] Patently, when petitioner could obtain full-time secular employment he did so. Petitioner cannot properly predicate error by the board on the basis of time estimates he gave three and one-half years earlier, in 1955, especially when those estimates amounted only to 18 hours per month in house-to-house activity in which all members must participate, plus 23 hours of attending meetings, five hours of preparing talks, and two or three hours' participation in service meetings, for an aggregate of 48 or 49 hours per month, none

[2] We do not find authority for petitioner's implication of current two-day-per-week secular work (Pet. 2–3, 12, 19–20) at the record citation offered, i.e., R. 71. This referred only to "last year," whereas, petitioner stated, "The last place of employment was Saramar Aluminum" (R. 70).

clearly devoted to actual leadership of the congregation.[3]

c. Petitioner had almost no experience in the administration of ordinances of public worship. In all the long claimed period of his ministry, he had conducted no "Lord's Supper," concededly the important annual ritual of the congregation, nor any baptism. Both of these ceremonies were reserved for the higher, actual ministry of the sect. He had conducted three funerals but this was apparently a function which could be performed by any baptized member (see *supra*, p. 7). After the board rejected his claim to exemption as a minister, he conducted one wedding.

The performance of ceremonies is clearly an element of the statutory exemption. Thus, the statute expressly excludes from exemption one who does not "regularly, as a vocation, teach and preach * * * *and* administer the ordinances of public worship * * *" (*supra*, p. 3, emphasis added). Petitioner wholly failed to establish that he met the latter requirement.

2. Petitioner argues that the instant decision presents a conflict of authority with *Wiggins* v. *United States*, 261 F. 2d 113 (C.A. 5), certiorari

[3] The statement "I devoted 100 hours expressly knocking at people's doors * * *" was for an earlier period (R. 72-73). Therefore, we cannot accept petitioner's assumption of 100 hours of service in his Question Presented II (Pet. 3) and elsewhere in his petition (pp. 12, 18-19, 21).

denied, 359 U.S. 942. At the time the government petitioned for a writ of certiorari in *Wiggins*, it feared that the decision would upset the system for classification of Jehovah's Witnesses based upon prior decisions of this court (*e.g.*, *Dickinson* v. *United States*, *supra*, and *Cox* v. *United States*, 332 U.S. 442) and upon the June 25, 1958, memorandum of their General Counsel (see Statement, *supra*, p. 8). Thus far, that apprehension has proved justified only in the area of the Fifth Circuit,[1] for the *Wiggins* decision has not been followed in other circuits. It has been distinguished in *United States* v. *Clark*, 307 F. 2d 1, 3 (C.A. 6), and *United States* v. *Kutz*, 199 F. Supp. 305, 209 (E.D. Wis.) where the facts were similar to those presented here. It was rejected in *United States* v. *Tellenburn*, 186 F. Supp. 203, 206 (D. Md.) where the court stated:

> This court must respectfully decline to follow the Wiggins decision for three reasons. First, it does not agree with the holding of the Court of Appeals for the Fifth Circuit that the position of a book study conductor is roughly analogous to that of an assistant minister or assistant pastor; secondly, as previously stated, it appears to this court that the statutory requirement for exemption as a minister that one teach and preach as his regular and customary vocation was not met in the Wiggins case; and thirdly, the relevance of the type of religious duties engaged in as to the issue of whether or not they constituted "teaching and preaching" was not considered.

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[1] Records of the Selective Service reveal that in four cases district courts in the Fifth Circuit have reluctantly granted judgements of acquittal on the basis of *Wiggins*. Prosecution has been declined by the United States in at least five other cases.

We believe that the decision below is correct and that therefore this case does not in itself warrant review. We cannot deny, however, that it is in conflict with *Wiggins* v. *United States*, *supra*.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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